REMARKS

Favorable reconsideration of this application in view of the above amendments and the following remarks is respectfully requested. By this amendment, claims 1-16 have been amended, and new claims 17 and 18 have been added, to more clearly present the subject matter of the instant application. Applicant submits that no new matter has been added, and formal notice of such is respectfully requested. Currently, claims 1-18 are pending of which claims 1 and 12 are independent.

The Examiner is thanked for indicating that dependent claim 4 presents allowable subject matter.

Claims 5-7 and 10 were rejected under 35 USC 112, second paragraph, as being indefinite. Claims 5-7 and 10 have been amended as presented above. In particular, claim 5 has been amended to delete "the" before "bursts." Claims 6 and 10 have been amended to eliminate the "and/or, and claims 17 and 18, respectively, have been added. Applicant submits that this rejection is moot in view of the above amendments to claims 5-7 and 10. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-3, 5, 6, 8-13, 15, and 16 were rejected under 35 USC 102(b) as anticipated by Lemke et al (U.S. Patent No. 5,398,276). Claims 7 and 14 were rejected under 35 USC 103(a) as unpatentable over Lemke '276. These rejections are respectfully traversed.

In one general aspect, a method for frequency calibration of a testing apparatus for testing mobile terminals provided for operation in a mobile communication net, such as mobile or cellular telephones, includes a testing apparatus passively listening to an established communication based on a data communication between a mobile terminal and a mobile

communication net, and at least partially sampling and evaluating the information signals underlying the communication; and based on the evaluation, calibrating a reference frequency unit incorporated in the testing device.

In another general aspect, a testing apparatus for testing mobile terminals provided for operation in a mobile communication net, such as a mobile or cellular telephones, includes a passive listening or tapping mode in which the testing apparatus monitors and evaluates a data exchange between the mobile terminal and a mobile communication net. The mobile communication net includes a base station.

Lemke relates to a portable signal strength analyzer (PSSA) for measuring and geographically-positioning cellular communication channel signal strengths in pedestrian areas that can be located both within and outside of buildings. The PSSA is organized as a backpack to be worn by a human operator. In order to carry out coverage measurements of a cellular telephone system, in the PSSA of the '276 patent, measurements of the downlink cellular communication channel signal strength are taken. No communication link is established between the PSSA and the local communication net since there are no uplink signals transmitted from the PSSA to, for example, the nearest base station.

Lemke, however, fails to describe or suggest the subject matter of the independent claim 1. In particular, Lemke lacks any suggestion or teaching of "a testing apparatus passively listening to an established communication [ ] between a mobile terminal and a mobile communication net;" of the testing apparatus "at least partially sampling and evaluating the information signals underlying the communication;" and of calibrating "based on the evaluation, [ ] a reference frequency unit incorporated in the testing device."

As described in the specification, for instance, at page 6, the testing apparatus of claim 1 passively listens to communication between a mobile telephone and a base station. Lemke fails to suggest the claimed "testing apparatus passively listening to an established communication [ ] between a mobile terminal and a mobile communication net" of independent claim 1. The PSSA of Lemke measures and stores downlink signal strength, i.e., the signal strength between network and the mobile. This is not listening to a communication, as claimed.

In Lemke, a PSSA calibration profile translates the stored RSSI signal strengths to absolute dBm signal strength. This is not the claimed testing apparatus "at least partially sampling and evaluating the information signals underlying the communication" of claim 1. As described in the specification, for example, at page 6, the bursts are measured and analyzed by the testing apparatus to show the frequency error of the communication bursts.

Finally, Lemke does not describe or suggest the claimed calibrating "based on the evaluation, [ ] a reference frequency unit incorporated in the testing device" of claim 1. Lemke provides (displays) phone profile information to a user through the pen-based computer of the PSSA, and allows for user modification of certain values for the calibration procedure. However, this is not the claimed calibrating a reference frequency unit in the testing device based on the evaluation of the information signals underlying the communication between the mobile terminal and the mobile communication net of claim 1. As described in the specification at page 6, for example, prior to calibration, the frequency error of the bursts from the mobile is minimized; then in the following step, the testing apparatus is calibrated.

Therefore, Lemke fails to teach or describe the invention of claim 1.

For at least the above reasons, claims 2-11 and 17, which depend from claim 1 are also not described or suggested by Lemke.

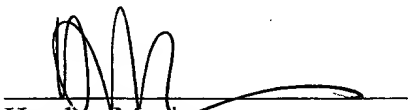
Similarly, Lemke fails to describe or suggest the subject matter of independent claim 12, and claims 13-16 and 18, which depend therefrom. Lemke fails to describe or suggest "a testing apparatus for testing mobile terminals provided for operation in a mobile communication net, such as a mobile or cellular telephones, [that includes] a passive listening or tapping mode in which the testing apparatus monitors and evaluates a data exchange between the mobile terminal and a mobile communication net," as recited in independent claim 12.

Accordingly, withdrawal of these rejections is respectfully requested.

Applicant submits that all pending claims are in condition for allowance, and formal notice of such is solicited. If the Examiner has any questions, the Examiner is requested to contact the undersigned at the number listed below.

Applicant hereby petitions for any extension of time that may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

Respectfully submitted,



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